IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.901 OF 2004

Janata Sahakari Bank Ltd., Pune. ... Appellant

Vs.

Smt. Ujwala Shankar Sahasrabuddhe
& Another. ... Respondents

Ms. Deshpande for the appellant.

Mr. P.J. Pawar for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 25TH APRIL, 2005.

P.C.:-

1. The appellant is original defendant 2 in Special Civil Suit No.1102 of 2003. In that suit, the plaintiff filed an application under Order 39, Rules 1 and 2 of the Civil Procedure Code and Sections 94 and 151 thereof praying for an order of injunction restraining the defendants from disturbing her possession of the suit flat. By the impugned order, the application was allowed and the defendants were restrained by an order of temporary injunction from disturbing the possession of the plaintiff of her suit flat and, hence, this appeal from order.

2. I have heard, at some length, Ms. Deshpande, the learned counsel appearing for the appellant. She contended that the story that by an oral agreement, defendant 1 sold the suit flat to the plaintiff is totally unacceptable. The suit flat has been mortgaged

to defendant 2-bank. Defendant 1 is the guarantor. She contended that this so called sale is just to defeat the appellant-bank's claim. She submitted that the trial court erred in passing an order of injunction.

3. In my opinion, the impugned order cannot be disturbed. The case of the plaintiff is that the plaintiff has purchased the suit flat from defendant 1 for a sum of Rs.3,75,000/-. According to her, on 16/3/1999, a sum of Rs.1,50,000/- has been paid by three cheques. On 19/3/1999, a sum of Rs.1,20,000/- has been paid in cash for which defendant 1 has given a receipt. On 22/3/1999, a sum of Rs.80,000/- has been paid by the plaintiff to defendant 1 for which defendant 1 has not given any receipt. According to the plaintiff, the plaintiff is in possession of the suit flat from 22/3/1999. The plaintiff has produced a certificate of the Society indicating that the Society had not given any NOC to defendant 1 to mortgage the suit flat. That certificate also says that the plaintiff is a member of the Society since 22/3/1999. The plaintiff has also produced a receipt which indicates that the plaintiff has paid transfer charges.

4. The case of the appellant-bank is that one M/s. Saikrupa Distributors through its partner Smt. Pooja Nitinchandra Mishra has obtained loan from defendant 2 bank of Rs.10 lacs and defendant 1 was a guarantor to the said loan. Admittedly, the mortgage transaction is a

subsequent transaction and the plaintiff is not a party to the said deed. In such circumstances, the trial court's order restraining the defendants from disturbing the plaintiff's possession cannot be set aside. As per my direction, an undertaking has been filed by the plaintiff in the trial court that she will not create any third party interest in the suit flat. Therefore, defendant 2 is protected. Obviously, in view of this undertaking, the plaintiff cannot sell the suit flat. The plaintiff should file a more detailed and proper undertaking in the trial court in that behalf within six weeks from today.

5. Since, it is the case of defendant 1 that the suit flat is sold by him to the plaintiff, obviously, there is no question of defendant 1 selling the suit flat to anyone or creating any third party interest therein. I am informed by the learned counsel for the appellant that an application has been filed by the appellant before the trial court for framing an issue as regards jurisdiction. That application be considered by the trial court in accordance with law as expeditiously as possible.

6. Appeal from Order is disposed of in the aforestated terms.

7. Civil application is also disposed of.

(SMT. RANJANA DESAI, J.)